IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5177 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINUBHAI CHHOTABHAI VAGHARI ALIAS VAGHELA

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

Mr. K.T. Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for the petitioner and learned A.G.P. Mr. A.J. Desai on behalf of the respondents nos.1, 2 and 3.

1 The detention order dated 7-5-1999 passed by the District Magistrate, Kheda(respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the detenu inter alia indicate that six Prohibition cases were registered against the petitioner-detenu in between 16-1-1997 to 3-3-1999. That in each of the cases country -made liquor has been seized from the possession of the petitioner. That all the six cases are pending for trial in the Court.

2.1 The grounds of detention further indicate that five witnesses on assurance of anonymity have given statements dated 3-4-199, 5-4-199 and 6-4-1999 against the petitioner-detenu with regard to bootlegging activities of the petitioner-detenu.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order is bad in law on account of non application of mind inasmuch as the detention order has been passed on 7-5-1999 though the last offence registered against the petitioner is registered on 3-3-1999 on the basis of which the detention order is passed.

5. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

5.1 That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381, after having considered the various authorities of the Supreme

Court has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid.

6. On scruntiny of papers, it appears that criminal case vide CR no.124/99 was registered at Nadiad Nashabandi Police Station on 3-3-1999 and the petitioner was released on bail on 11th March, 1999. The statement of witnesses appears to have been recorded thereafter who have not given the exact date regarding alleged incidents of bootlegging of the petitioner. That the grounds of detention is devoid of any explanation, much less, a reasonable explanation as to why proposed action against the petitioner was delayed till 7-5-1999. No affidavit-in-reply appears to have been filed by either of the respondents. Under the circumstances, the inordinate delay in passing the impugned order from 3-3-1999 to 7-5-1999 has remained unexplained, and as such, it is difficult to uphold the impugned order.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 7-5-1999 passed by the District Magistrate, Kheda (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Vinubhai Chhotabhai Vaghari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

****

stanley-akt